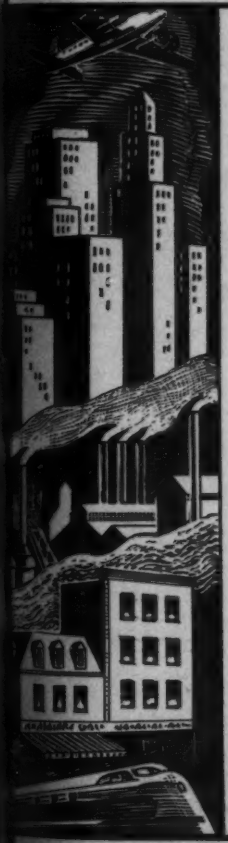
The
CORPORATION JOURNAL

Trademark ®

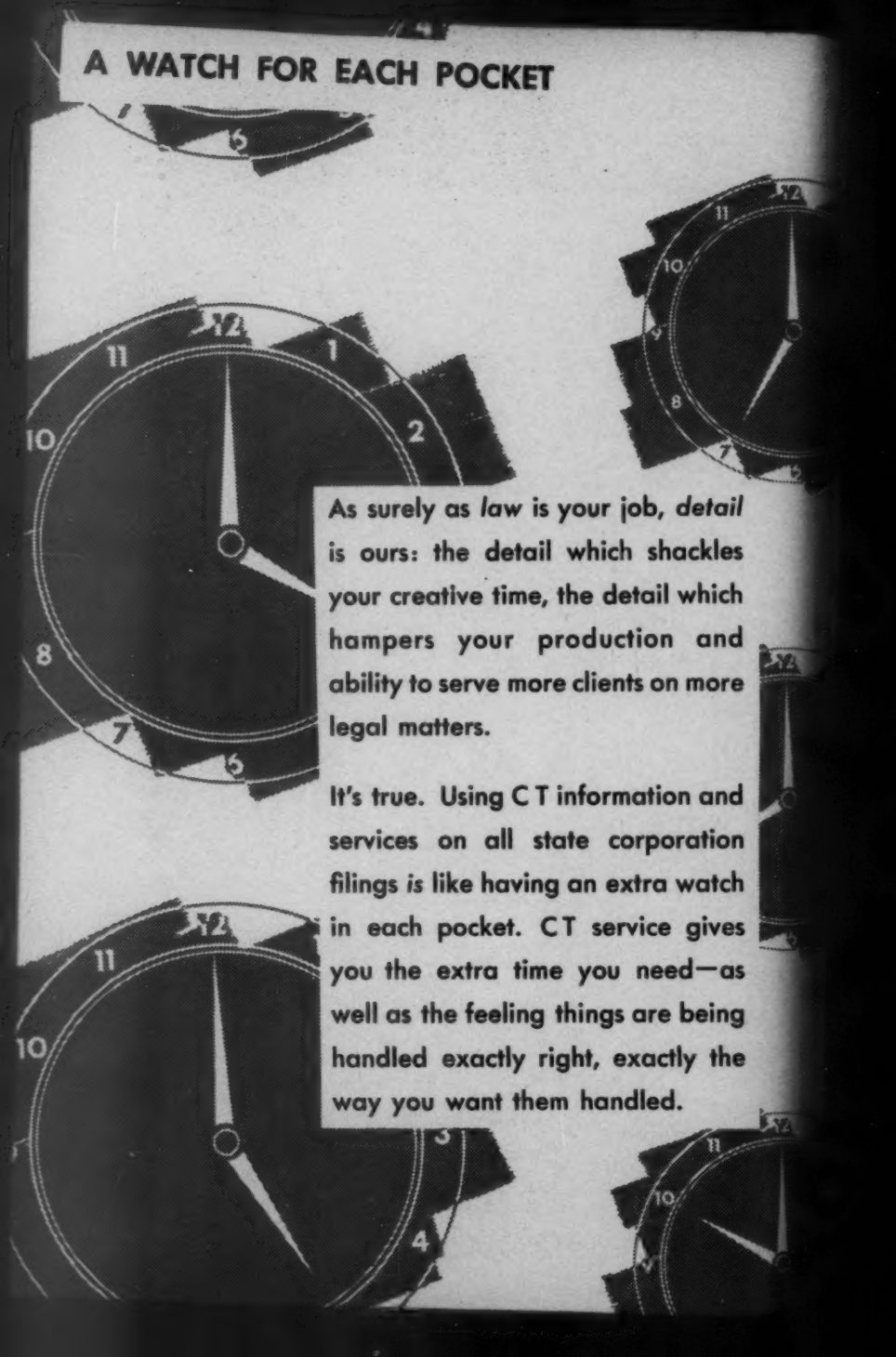
In the incorporation, qualification and statutory representation of corporations, The Corporation Trust Company, CT Corporation System and associated companies deal with and act for lawyers exclusively.

Vol. 22, No. 7 AUGUST—SEPTEMBER 1958 Complete No. 416



Published by The Corporation Trust Company and Associated Companies

A WATCH FOR EACH POCKET



As surely as *law* is your job, *detail* is ours: the detail which shackles your creative time, the detail which hampers your production and ability to serve more clients on more legal matters.

It's true. Using C T information and services on all state corporation filings *is* like having an extra watch in each pocket. C T service gives you the extra time you need—as well as the feeling things are being handled exactly right, exactly the way you want them handled.

The
CORPORATION JOURNAL

Trademark ®

AUGUST—SEPTEMBER 1958

Contents

Recent Decisions

ALASKA

Not quite yet the 49th state but (based on the volume of inquiries received) there is already great interest in the foreign corporation requirements of Alaska—mostly, we believe, because of a desire to protect corporate titles.

CT (as with any state, Canadian province or U. S. territory or possession) always has complete, up-to-the-minute information about Alaska's corporation requirements on hand. It is for lawyers only. It is available without charge or obligation at the CT office nearest you.

what constitutes doing business

Maintaining Suit After Formal Withdrawal

A QUESTION frequently arises concerning whether a foreign corporation, which had been qualified to do business in a state from which it has withdrawn in accordance with statutory procedure, may sue in that state's courts on a cause of action or right which accrued to it during the time it was authorized to do business.

Such a foreign corporation has been permitted to reenter the state, without re-qualifying, in order to use the state courts to maintain suits related to transactions carried on within the state prior to withdrawal. (*Indian Refining Co., Inc. v. Royal Oil Co., Inc.*, 102 Cal. A. 710, 283 Pac. 856; *Porter v. Hope*, (Tex.) 279 S. W. 535. In the *Indian Refining* case, the court said:

> "Where a foreign corporation has complied with the provisions of law enabling it to do business in this state, and has subsequently withdrawn from such intrastate business, and filed the certificate thereof in the proper manner, there is nothing in our law to prevent it from subsequently maintaining an action to collect an account that arose while it was lawfully doing business in this state, and the filing of such an action does not constitute doing business within the meaning of the statute."

Recovery has likewise been permitted under somewhat similar circumstances where, however, the termination of the authority to do business has occurred involuntarily because of failure to pay a given tax, followed by a denial of corporate rights by statute.

In a Texas decision, it was held that a foreign corporation whose right of action accrued at a time when it was lawfully engaged in business in the state, and its franchise tax for the period had been paid, and when it was conducting its business under authority of a permit issued to it by the state for that purpose and still in force, could enforce such right, notwithstanding it had in the meantime forfeited its privilege to continue the transaction of business in the state for failure to pay its franchise tax. (*Deveny et al. v. Success Co.*, 228 S. W. 295.) Earlier Texas cases cited by the court in this case were *Kingman Co. v. Borders*, 156 S. W. 614; *Stark Co. v. Harry Bros. Co.*, 122 S. W. 947; *Texas, etc. Co. v. Worsham*, 13 S. W. 384.

In a State of Washington decision, a corporation had been stricken from the rolls by the Secretary of State as delinquent some time before the institution of the suit, at which time it was still delinquent. Prior to the trial, the corporation had been reinstated, and was once more in good standing. The Supreme Court of Washington ruled that the corporation was entitled to go to trial under the circumstances. (*Karnes et al. v. Flint et al.*, 279 Pac. 728.)

A Delaware company which had forfeited its right to do business under Montana law, for failure to file returns of net income and annual reports, was held by the Montana Supreme Court not to be deprived of the right to hold title to Montana land, to pay taxes to protect that title and to redeem from a tax sale. (*Stensvad v. Ottman et al.*, 208 P. 2d 507.)

domestic corporations

DELAWARE

In a derivative suit based upon alleged wrong committed by directors, State Supreme Court ruled plaintiff shareholder need not show effort to obtain stockholder action in order to maintain suit.

Plaintiff, a stockholder in one of the defendant corporations, brought suit to redress alleged frauds and wrongs committed by the defendant directors upon her corporation, involving dealings between it and the other defendant company. The amended complaint set forth reasons why demand on the directors for action would be futile and the sufficiency of these reasons was not challenged. The Supreme Court of Delaware regarded the issue between the parties as narrowing itself to this: "If the ground of the derivative suit is fraud, is demand for stockholder action necessary under the rule?" The rule referred to was Rule 23(b) of the Rules of the Court of Chancery relating to stockholders' derivative suits. The second sentence of paragraph (b) provides: "The complaint shall also set forth with particularity efforts of the plaintiff to secure from the managing directors or trustees and, if necessary, from the shareholders such action as he desires, and the reasons for his failure to obtain such action or the reasons for not making such effort."

Reversing a ruling of the Court of Chancery, New Castle County, dismissing the complaint, in *Mayer v. Adams et al.*, 135 A. 2d 119, (The Corporation Journal, February—March, 1958, page 65), the state Supreme Court remarked: "It is quite true, as defendants say, that no Delaware case has ever passed upon the point, that is, whether an effort to obtain stockholder action is required. It has never been squarely raised. But over a long period of years, in many minority stockholders' suits, no defendant has apparently ever suggested the point. This, we think, is quite significant. The settled practice in Delaware has been that demand upon and refusal by the directors is sufficient, or, if the directors are disqualified to give redress, demand would be futile and is excused."

Mayer v. Adams et al., 141 A. 2d 458. Clarence W. Taylor and Stewart Lynch of Hastings, Lynch & Taylor, of Wilmington, for appellant. Robert H. Richards, Jr., and Stephen E. Hamilton, Jr., of Richards, Layton & Finger, of Wilmington, for appearing appellees other than Ada Oil Company, Inc. Edwin D. Steel, Jr. and Andrew B. Kirkpatrick, Jr., of Morris, Steel, Nichols & Arsht, of Wilmington, for appellee Ada Oil Company, Inc.

Comity regarded as requiring delay of action on order to direct election of directors, where court in another state had assumed jurisdiction in comparable proceeding.

Petitioners, who purported to be substantial stockholders of Western Airlines, Inc., sought an order under Section 224 of the Delaware Corporation Law, summarily directing an election of directors. On October 10, 1956, the corporation's stockholders at a duly convened adjourned special meeting voted to amend the corporation's charter by eliminating therefrom a provision which provided for cumulative voting. Before such meeting was convened, however, the Commissioner of Corporations of California had assumed jurisdiction in the matter, having taken the position that the proposed change in voting rights was a "sale" under the Corporate Securities Law of California and that a permit from the Commissioner was required prior to putting such proposal to a vote. Proceedings were pending in California for judicial review of a ruling of the Commissioner and argument was scheduled in the Superior Court of the State of California.

The Court of Chancery, New Castle County, concluded that comity required it to withhold entry of a summary order "until the California court expressed its views on the question whether or not California may insist that directors of this Delaware corporation be elected by cumulative rather than straight voting."

In the Matter of Western Airlines, 140 A. 2d 777. Henry M. Canby of Wilmington, for petitioners, William S. Bartman, Gordon Y. Billard, Bartman Bros., a partnership, Bernard Citron, Louis A. Chase, Georges M. George, Percy L. Ross, Joseph D. Shane and Harden F. Taylor. William S. Potter of Wilmington, for intervener, A. Evelyn Wynne. C. J. Killoran of Wilmington and Hugh W. Darling of Los Angeles Cal., for respondent Western Airlines, Inc.

ILLINOIS

Creation of self-perpetuating board of non-profit company by valid by-law amendment, held not to violate members' constitutional rights.

A question before the Supreme Court of Illinois was whether the creation of a self-perpetuating board of a not-for-profit hospital corporation, by valid amendment of the by-laws by the board of directors, deprived members, or directors elected by the members, of their constitutional rights.

The court noted that the company was incorporated in 1939 under a corporation act approved in 1872, as amended. The General Not for Profit Corporation Act of 1944 stipulated that its provisions relating to domestic corporations were to apply to all not-for-profit corporations theretofore organized under certain sections of the 1872 act, as the company was. Section 15 of the 1944 act states that the right of members to vote may be limited, enlarged or denied to the extent specified in the by-laws. "Article 10 of the corporate by-laws," observed the court, "when construed in the light of these enactments, can-

not enlarge the rights of members to make valid by-laws. The board of directors alone had the power to amend the by-laws at all times involved in this litigation, and unless section 14 (163a14) is unconstitutional, it had the right in 1955 to amend the by-laws to provide for a self-perpetuating directorate." The court pointed out that it was established that the right of members of a not-for-profit corporation to vote is not constitutionally protected and concluded that the amendments to the by-laws in issue, adopted by the majority of a 15-member board of directors which was legally elected by the board of directors, did not deprive the members of their constitutional rights.

Westlake Hospital Association v. Blix, 148 N. E. 2d 471. Rosenthal & Schanfield (William P. Rosenthal, Leonard Schanfield, Stanley R. Weinberger, Gilbert Feldman and James J. Doheny, of counsel), of Chicago, for appellants. Brown, Dashow & Ziedman, of Chicago (Albert Langeluttig, of Chicago, and Jack Joseph, River Forest, of counsel), for appellees.

VIRGIN ISLANDS

Administratrix of the estate of a deceased stockholder was held entitled to inspection of corporate books and records.

Respondent corporation appealed from an order entered by the District Court of the Virgin Islands directing it to make available its books and records and those of all other corporations owned by it for inspection and copying by the petitioner, who was administratrix of the estate of a deceased stockholder. The corporation asserted that the administratrix was not entitled to inspection of its books, and that the order for inspection was too broad. The stock of the deceased was subject to a purchase agreement, the validity of which the court did not decide, between the deceased and two others, under which it was agreed that, in the event of the death of one, the others, or one alone, if the other refused, should have the right to purchase the decendent's stock from the estate. The corporation maintained that by virtue of this agreement title to the stock in question passed to the survivor immediately on his election to purchase it, thus divesting the administratrix of any proper purpose for inspection.

The court, in affirming the order of inspection, pointed out that, assuming the agreement to be valid, the administratrix had the right to inspection at least until after the proper amount of the purchase price had been determined and paid. In the event that the purchase agreement be determined by the district court to be invalid, the administratrix would be equally entitled to inspection in order to administer properly the estate. As to the corporation's argument that the inspection order was broader than authorized by the local statute, the court held that "statutory provisions securing to stockholders the right to inspect books and records are to be regarded as supplemental to the common law right to such inspection and not as a restriction upon it." The order of inspection was affirmed.

Bishop's Estate v. Antilles Enterprises, Inc., 252 F. 2d 498. W. W. Bailey, Charlotte Amalie, St. Thomas, for appellant. Croxton Williams, Charlotte Amalie, St. Thomas, for appellee.

foreign corporations

CALIFORNIA

Purchasing by foreign corporation of goods in state and shipment by exclusive export agent, ruled sufficient to uphold service of process upon corporation.

Petitioner foreign corporation sought a writ of mandamus to compel the respondent court to set aside its order for substituted service of process upon it in a suit against it in that court. Service had been made upon the Secretary of State under Section 6501 of the Corporations Code, as directed by the trial court. That section authorizes such service on foreign corporations which are "doing business" in the state.

The California Supreme Court, in denying the relief sought, observed that the corporation effected regular purchases of goods from the plaintiff in the suit, which had acted as its exclusive export agent, and that it took title to the goods in the state and directed its agent how and where to ship them. After ceasing to do business with the plaintiff it entered into a similar course of business dealings with the defendant partnership, the alleged cause of action growing directly out of the corporation's relationship with the plaintiff and the partnership in California.

*Henry R. Jahn & Son, Inc. v. Superior Court of San Mateo County et al.,** 323 P. 2d 427. Joseph C. Myerstein of San Francisco and Donald J. Kennedy, for petitioner. Pedder, Ferguson & Pedder and Robert J. Pedder of San Francisco, for real party in interest.

* The full text of this opinion is printed in the **State Tax Reporter**, California, page 13,304.

Corporation which had left California before attempted service in an action not arising out of activities in the state, ruled not subject to the jurisdiction of state.

Petitioner corporation moved to quash service of summons, effected in California by service on its alleged general manager and on the Secretary of State, on the ground that it had never done business in California, and that process was served after all California activities by petitioner had ceased. The motion had been denied by the Los Angeles Superior Court. Petitioner corporation thereupon sought a writ of mandate in the District Court of Appeal, Second District, requiring the Superior Court of Los Angeles to enter an order quashing the service. The petitioner's allegations that it had never been engaged in business in California, and that it had withdrawn from the state before process was served, were admitted.

The District Court of Appeal found it unnecessary to decide whether the petitioner had been doing business in

California because of the admitted showing that it had left the state four months before the attempted service, and because the alleged cause of action did not arise out of any activities in California. Discussing the California statute, the court took the view that "when the legislature has declared that the departure of a foreign corporation from this state shall terminate the right to fasten jurisdiction on it through service of process except in those cases where the cause of action arises out of business done within this jurisdiction, the courts are not free to strike down this limitation or to substitute their own views of what is the more enlightened or progressive approach to the subject. Petitioner having departed from this state long before the service of process, and the cause of action not having arisen from intrastate business transacted here, petitioner is entitled to a peremptory writ."

Confidential, Inc. v. Superior Court et al., 320 P. 2d 546. Birnbaum & Hemmerling for petitioner. Harold W. Kennedy, County Counsel, and Wm. E. Lamoreaux, Asst. County Counsel, for respondent Superior Court. John R. Jacobs, Jr. and Harden C. Bennion of Hollywood, for respondent Liberace.

MARYLAND

Service of process was set aside where it was made upon a foreign corporation acting through a local manufacturer's agent.

The appellee Ohio corporation moved to quash service of process upon it. Its equipment was sold in Maryland under a distributor's agreement with a Maryland corporation. This distributor sent orders made in its own name which were accepted in Ohio by the appellee, which had no office or personnel residing in Maryland. A telephone listing in the company's name had been effected on the distributor's initiative. The distributor was not supervised in any manner by the Ohio corporation, which made no inspection of the distributor's books or records. The equipment, under the distributor's purchases, was shipped directly to the distributor's customers, who took the equipment off flat cars, under the supervision of the distributor, and trucked it to its destination. The distributor sent its servicemen to instruct the customers in the assembly of the equipment, how to operate it, and also serviced it with its own servicemen. The distributor was billed by the Ohio company and the distributor billed the customer. The distributor acted for many companies other than the Ohio corporation.

The Court of Appeals of Maryland concluded that the corporation was not doing business in Maryland and that service of process against it was properly quashed by the trial judge.

Arundel Crane Service, Inc. et al. v. Thew Shovel Co. et al., 135 A. 2d 428. Robert D. Bartlett (A. Adgate Duer on the brief) for Arundel Crane Service, Inc., by Robert E. Coughlan, Jr., (Joel J. Hochman and J. Marshall Neel, on the brief) for Sebastian Perrera et al.; (Franklin Goldstein and Burke, Gerber & Wilen, on the brief for David Feldman); all of Baltimore. Herbert F. Murray (Clater W. Smith and Clark, Smith & Prendergast, on the brief), for Thew Shovel Co., one of the appellees.

MISSOURI

Foreign corporation maintaining an office in Missouri as an integral part of its activities held doing business in Missouri so as to make it amenable to service of process.

Plaintiff filed suit against defendant New York corporation, in the Circuit Court of St. Louis, to recover damages for defendant's alleged failure to supply him with a service letter, as required by statute, at the termination of his services as manager of defendant's St. Louis office. Service was made on the person in charge of defendant's St. Louis office. The cause was removed to the United States District Court on the ground of diversity of citizenship and defendant moved to quash service, alleging that it was engaged exclusively in interstate commerce and not, therefore, subject to service and suit in Missouri. The defendant maintained an office in St. Louis, which it furnished, and used the services of an independent sales force, not subject to its control, which solicited magazine subscriptions. The subscriptions were offered for sale to defendant's St. Louis office which in turn forwarded them to defendant's New Jersey office for approval or disapproval. If accepted, the orders were sent to the various magazine firms designated for them to fill the subscriptions. Defendant also used an independent collection force which made periodical collections on the magazine contracts purchased by defendant, turning the proceeds over to the St. Louis office for forwarding to defendant.

In holding that defendant was doing business in Missouri so as to make it amenable to service of process, the Federal District Court found that the activities of the defendant constituted a continuous process, of which the defendant's St. Louis office was an integral part. The court concluded: "Defendant, in so far as operating its St. Louis office, receives the benefit and protection of Missouri laws. Thus it does not seem unreasonable to impose obligations on the defendant as to employment of persons in this Missouri operation. And, failure to meet its fair and just obligations will subject said non-resident to service of process within this state."

Fiore v. Family Publications Service, Inc.,* 157 F. Supp. 572. Maurice S. Karner, John W. Barry, for plaintiff. J. H. Cunningham, Jr., Willson, Cunningham & McClellan, for defendant.

---

* The full text of this opinion is printed in the **State Tax Reporter,** Missouri, page 10,231.

Better, uninterrupted protection against delayed or misdirected service of process

Better, surer coverage on new or revised corporate requirements

Better, more systematic coverage of regular state report and tax responsibilities

From any angle, the
CT System of Corporate Protection is
better for counsel,
better for the corporation

Better protection of counsel's interests.
He is *always* informed *all ways*.

taxation

ILLINOIS

Foreign corporation, electing to pay franchise tax upon entire stated capital and paid-in surplus, subsequently the survivor in a merger, ruled unable to change to proportionate method where it failed to file an amended report prior to statutory deadline.

Plaintiff, a foreign corporation which was doing business in Illinois, had, when it filed its annual report in February, 1956, elected to pay its Illinois franchise tax on its entire stated capital and paid-in surplus. The company's stated capital and paid-in surplus was increased as a result of a merger as of July 2, 1956, and on July 30, 1956 an amended report was filed, subsequent, however, to the statutory deadline of June 25, 1956, and the license fees, franchise taxes and filing fees and penalties on that portion of the increase in its stated capital and paid-in surplus were computed by the corporation *under the apportionment formula* set forth in the Business Corporation Act. This computation was rejected by the Secretary of State, who computed the license fees and franchise taxes additionally due on the *entire* increase in the stated capital and paid-in surplus arising as a result of the corporate changes.

The Illinois Supreme Court held that the corporation had waived its right to have its taxes and fees assessed by the proportionate method by reason of its failure to file an amended annual report before the statutory deadline.

United States Borax & Chemical Corporation v. Carpentier, Secretary of State et al., 150 N. E. 2d 818. Latham Castle, Atty. Gen. (William C. Wines, Theodore G. Maheras, Raymond S. Sarnow and A. Zola Groves, of counsel), of Chicago, for appellants. Giffin, Winning, Lindner & Newkirk, of Springfield (Montgomery S. Winning, of Chicago, of counsel), for appellee.

KANSAS

Kansas use tax assessed against corporation making purchases of equipment under its contract with the United States held properly set aside as the "use" contemplated is a "use incident to ownership" and the equipment was owned by the United States.

This appeal arose under the Kansas compensating tax law commonly referred to as the "use" tax. The State Commission of Revenue and Taxation sustained an assessment of the use tax against a corporation making airplanes in Kansas under a contract with the United States of America; the district court set aside the assessment and the commission appealed. Under its contracts with the United States, the manufacturing corporation purchased

equipment outside Kansas upon authorization of the United States officers in charge at its Kansas plant. The purchases were transported on U. S. Government bills of lading, received at the corporation's Kansas City plant, immediately tagged as being "property of the U.S.A.F.", and records were prepared showing the equipment as Government owned. The equipment was paid for from the corporation's funds, and reimbursement promptly made by the United States. The United States controlled the equipment, it was not listed on the corporation's books as part of its assets, no depreciation or amortization was taken thereon, and no insurance was carried.

In holding that the corporation was not liable for the use tax on such equipment, the court pointed out that "the taxable event giving rise to the imposition of the tax is not the sale but is the *use, storage* or *consumption* of property within the state which was acquired by purchase *outside* the state." "The word 'use' means and includes the exercise within this state by any person of any right or power over tangible personal property *incident to the ownership thereof.*" The court found that the government owned the property upon its entry into the state and continuously thereafter; the use of such property by the corporation was merely to accomplish the purpose of the owner, the production of airplanes. The corporation's use of the property was not incident to its ownership. The judgment of the district court, setting aside the assessment, was affirmed.

*General Motors Corporation and the United States of America v. Commission of Revenue and Taxation,** 320 P. 2d 807. Clarence J. Malone, of Topeka, and Frank G. Theis, of Arkansas City, for appellant. Willard N. Van Slyck, Jr., of Topeka, and Edward M. Boddington, Jr., of Kansas City, argued the cause, and Clayton E. Kline, M. F. Cosgrove, Robert E. Russell, William B. McElhenny, O. R. Stites, Jr., and James L. Grimes, Jr., all of Topeka, and Edward M. Boddington and J. O. Emerson, of Kansas City, were with them on the briefs for General Motors Corporation, a corporation, appellee. H. Eugene Heine, Jr., Department of Justice, Washington, D. C., argued the cause, and Charles K. Rice, Assistant Attorney General, A. F. Prescott and John J. Crown, Department of Justice, Washington, D. C., and William C. Farmer, United States Attorney and Milton P. Beach, Assistant United States Attorney, were with him on the briefs for the United States of America, appellee.

---

* The full text of this opinion is printed in the **State Tax Reporter,** Kansas, page 6392.

LOUISIANA

Foreign corporation engaged exclusively in interstate commerce held not exempt from Louisiana income tax assessed on net income derived from sources within the state.

Appellant, a Kentucky corporation, brought this action against the Louisiana Collector of Revenue to recover income taxes and interest paid under protest, alleging that its activities in Louisiana constituted interstate commerce and therefore were not subject to the Louisiana income tax. From an adverse decision in the Nineteenth Judicial District Court, the corporation appealed to the Louisiana Supreme Court. Appellant's business consisted of the distillation and packaging of whiskies at Louisville, Kentucky and the distribution thereof in other states. Goods were shipped to customers in Louisiana on orders submitted by such customers to appellant's representatives in Louisiana who transmitted them to Louisville, where they were approved or rejected. In the event of approval, the merchandise was shipped directly to the customer who remitted payment to Louisville. Appellant did not maintain a warehouse or stock of goods in Louisiana, its activities there being confined to the presence of "missionary men" who called on wholesalers and sometimes accompanied the salesmen of such wholesalers on their calls, but who neither solicited nor accepted orders from retailers.

The court, in holding that appellant was subject to the Louisiana income tax, stated that "the circumstance that a foreign corporation is engaged exclusively in an interstate business does not exempt it from the payment of State taxes assessed on net income derived by it from sources within the State." In reply to appellant's claim that this rule should not apply to it because its activities in Louisiana were so limited, the court stated that "the extent of the activity of the taxpayer within the State is of no importance in determinating whether the levy is a burden on interstate commerce." The court found appellant's contention that it did not derive income from sources within Louisiana to be without force, and affirmed the judgment dismissing the suit.

*Brown-Forman Distillers Corp. v. Collector of Revenue,** 101 So. 2d 70. Chaffe, McCall, Phillips, Burke & Hopkins, Gibbons Burke, of New Orleans, for appellant. Robert L. Roland, Levi A. Himes, Roy M. Lilly, Jr., Philip N. Pequet and Chapman L. Sanford, of Baton Rouge, for appellee.

---

* The full text of this opinion is printed in the **State Tax Reporter**, Louisiana, page 12,215.

NEW YORK

Increase in number of shares of a foreign corporation resulting from a stock split-up, held basis for recomputation of license fee for privilege of exercising a corporate franchise.

The New York Supreme Court, Appellate Divsion, Third Judicial Department, had occasion to review a determination of the State Tax Commission which sustained an assessment of a recomputed license fee imposed upon the petitioner, a New Jersey corporation doing business in New York, by Section 181 of the Tax Law.

The tax questioned was imposed when 432,825 shares without nominal or par value, but having a stated value of $10 per share, were changed into 1,298,475 shares, without nominal or par value, having a stated value of $3.33⅓ per share. The court quoted from Section 181, imposing a license fee on issued par value capital stock employed within the state as an initial fee and also a further provision reading: "In any case where a change is made in the capital share structure of a corporation, or the amount of capital stock employed in this state is increased, that the fee shall be recomputed on the basis of such change or increase, and there shall be credited against the fee, as recomputed, the amount of any fee that may have been previously paid." From the latter phrase the court concluded that it was clear that a change in the capital share structure "includes the increase in the number of shares which resulted from the stock split-up in this case." It rejected a contention of the petitioner corporation that only a dollar increase was taxable.

*American Chicle Co. v. State Tax Commission,** 172 N. Y. S. 2d 389. Seibert & Riggs (Murray Taylor of counsel), of New York City, for petitioner. Louis J. Lefkowitz, Atty. Gen. (Paxton Blair, Sol. Gen., and Robert W. Bush, Asst. Atty. Gen., of counsel), of Albany, for respondent.

* The full text of this opinion is printed in the **State Tax Reporter,** New York, page 12,061.

PENNSYLVANIA

Pennsylvania capital stock tax imposed on a domestic corporation, based in part on its intangible assets located outside Pennsylvania, held not violative of the due process clause of the Federal Constitution, as the situs of such property for taxation is the domicile of the owner.

The Pennsylvania Supreme court phrased the question involved in this case as follows: "May Pennsylvania impose a capital stock tax on a domestic corporation based in part upon intangible assets which are located outside of Pennsylvania and have acquired a commercial or business situs in Florida, without violating the due process clause of the Constitution?"

In this test case, the defendant was a Pennsylvania corporation with its

registered office in Ambridge, Pennsylvania, and its principal office in Florida, engaged exclusively in painting, repairing and making various installations on ships belonging to the Government of the United States and located in the British West Indies and Puerto Rico. All its contracts were made out of the Florida office; all control, supervision, and management of its assets and business were exercised at the Florida office; all meetings were held there; all books and records maintained there. The defendant kept no inventory in Pennsylvania, and employed no salesmen there. The defendant conducted its executive and administrative offices in Florida and performed there all other necessary functions to carry on its business, with the exception of the actual construction work which was done outside the continental limits of the United States. During the tax year here involved the defendant filed with the State of Florida a Corporation Intangible Tax Report upon which it paid a tax on cash on hand and in banks, and on accounts receivable. The Pennsylvania capital stock tax in question was determined by multiplying the value of the capital stock by a property allocation fraction, the numerator of which was the value of defendant's intangible assets, and the denominator of which was the value of defendant's total assets.

In upholding the imposition of the tax, and the basing of the tax in part on property subject to taxation by another jurisdiction, the court ruled that the tax did not violate the due process clause of the Federal Constitution. The court cited the ancient doctrine of *mobilia sequuntur personam*, that movables follow the person, i. e., have as their situs the domicile of their owner. This doctrine it found still applicable to intangible personal property, and thus determined the situs for taxation of such property to be the owner's domicile. The court quoted the United States Supreme Court: "The limitation imposed by the Fourteenth Amendment is merely that a state may not tax a resident for property which has acquired a permanent situs beyond its boundaries", and concluded that the Pennsylvania tax did not violate the Federal due process clause.

Commonwealth v. Universal Trades, Inc.,* 141 A. 2d 204. Manual Kraus, Roy J. Keefer, Gerald Krekstein and Hull, Leiby & Metzger of Harrisburg, for appellant. Edward Friedman, Deputy Atty. Gen., and Thomas D. McBride, Atty. Gen., for appellee.

* The full text of this opinion is printed in the **State Tax Reporter**, Pennsylvania, page 12,144.

Panel Discussion On Corporate Law Departments. On Monday, August 25, 1958, there will be a panel discussion at the Union Oil Center, 461 South Boylston Street, Los Angeles, California, at 9:30 A. M., on "Some Problems in Organization and Operation of Corporate Law Departments". Members of the panel will include the general counsels of the following companies: United States Steel Corporation, Aluminum Company of America, The Goodyear Tire & Rubber Company, Shell Oil Company, and Pacific Gas & Electric Company. There will be a report on the activities of the American Bar Association Committee on Corporate Law Departments.

state legislation

Georgia — Act 461 permits the holding of shareholders' meetings of Georgia companies outside Georgia, but within the United States, if the charter or by-laws so provide. Incorporators meetings may also be held outside of Georgia.

Kansas — Taxpayers may not elect to pay income taxes in installments unless the tax shown on the return exceeds $200, under an amendment effected by House Bill 59, Laws of 1958.

Mississippi — House Bill No. 978 amends the provisions relating to the appointment of a statutory agent by domestic and foreign corporations to include non-profit corporations. The act imposes an additional penalty of $100 upon a foreign corporation failing to maintain an agent.

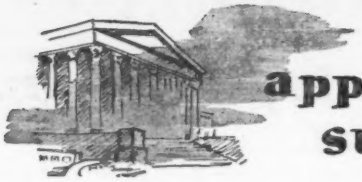
New Jersey — Assembly Bill 501 of 1958 amends the New Jersey Corporation Business Tax Act, which imposes the Franchise Tax based upon net worth, to incorporate into that tax a 1¾% tax upon net income allocated to the state, which is to be in addition to the tax based upon net worth allocated to New Jersey, and to be effective with respect to the tax payable in the year 1959 and thereafter. The provisions with respect to the franchise taxation of an investment company or regulated investment company have been revised.

New York — Chapter 483 amends Section 105(8) of the Stock Corporation Law, relating to the survival of corporations after dissolution, to provide that dissolved corporations shall also continue for the purpose of participating in arbitration proceedings after having been dissolved.

Chapter 985 provides that the certificate of incorporation of a proposed domestic corporation or the statement and designation of a foreign corporation have the approval of the State Board of Standards and Appeals where the corporation has for its purpose the performance, rendition or sale of services as labor consultant, advisor or labor-management relations, arbitrator or negotiator in labor-management disputes or having the name of labor consultant, labor-management advisor, negotiator or arbitrator or labor specialist.

Chapter 47, Laws of 1958, provides that the Attorney General may serve the Secretary of State with process, as agent of unlicensed foreign corporations, in suits against such corporations for the unlawful exercise of corporate rights in dealings with individuals, domestic corporations and with foreign corporations authorized to do business in the state.

Rhode Island — Senate Bill 380 permits directors to close stock transfer books for not exceeding 50 days preceding the date of any stockholder's meeting, or for payment of dividends or allotment of rights or when any conversion etc. on stock shall go into effect, or for a like period in connection with obtaining stockholders consent for any purpose, or may fix the record date not exceeding 50 days preceding date of any stockholder's meeting, for the purpose of determining rights of stockholders with respect to notice, voting, etc.



appealed to the supreme court

*The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.**

CALIFORNIA. Docket No. 880. *Alhambra-Shumway Mines, Inc. et al. v. Alhambra Gold Mine Corporation,* 317 P. 2d 649. (The Corporation Journal, June—July, 1958, page 113.) Failure to pay franchise taxes—right to defend action. **Appeal filed, March 28, 1958. May 19, 1958:** *"Per curiam:* The motion to dismiss is granted and the appeal is dismissed. *Gospel Army v. Los Angeles et al.,* 331 U. S. 543." (78 S. Ct. 993.)

GEORGIA. Docket No. 763. *Stockham Valves & Fittings, Inc. v. Williams,* 101 S. E. 2d 197. (The Corporation Journal, December 1957—January 1958, page 55.) Corporation income tax—interstate commerce. **Petition for writ of certiorari filed, February 3, 1958. Certiorari granted, March 17, 1958.** (78 S. Ct. 670.)

LOUISIANA. Docket No. 142. *Brown-Forman Distillers Corporation v. Collector of Revenue,* 101 So. 2d 70. (The Corporation Journal, August—September, 1958, page 134.) Income tax—income received by corporation engaged only in interstate commerce. **Petition for writ of certiorari filed, June 30, 1958.**

MINNESOTA. Docket No. 606. *Minnesota v. Northwestern States Portland Cement Co.,* 84 N. W. 2d 373. (The Corporation Journal, August—September, 1957, page 14.) Income tax—income received by corporation engaged only in interstate commerce. **Appeal filed, November 12, 1957. Probable jurisdiction noted, January 6, 1958.**

OHIO. Docket No. 588. *Youngstown Sheet & Tube Co. v. Bowers,* 166 O. S. 122, 140 N. E. 2d 313. (The Corporation Journal, February—March, 1958, page 72.) Property taxes — ores imported from foreign countries. **Appeal filed, October 30, 1957. Probable jurisdiction noted, January 6, 1958.**

PENNSYLVANIA. Docket No. 990. *Commonwealth of Pennsylvania v. National Biscuit Company,* 136 A. 2d 821. (The Corporation Journal, April—May, 1958, page 94.) Franchise tax—nature—validity. **Appeal filed May 9, 1958. Motion to dismiss granted and appeal dismissed for want of a substantial Federal question, June 30, 1958.**

---

* Data compiled from **CCH U. S. Supreme Court Bulletin.**

regulations and rulings

Florida — When an original issue of corporate stock is made by a Florida corporation in another state, where stock books and transfer records are maintained, the transaction must also be recorded in the records of the corporation maintained in Florida and is subject to state documentary stamp taxes. (Opinion of the Attorney General, State Tax Reporter, Florida, ¶ 200-193.)

When a Florida corporation amends its charter to increase the par value of outstanding stock, without issuing new shares, no additional stamp tax is payable on the transaction. However, when the corporation issues to its stockholders a rider evidencing the change in value, this instrument is subject to documentary stamp taxes. (Opinion of the Attorney General, State Tax Reporter, Florida, ¶ 200-191.)

Transfers of stock make upon stock transfer records maintained in other states by Florida corporations are not subject to documentary stamp taxes. (Opinion of the Attorney General, State Tax Reporter, Florida, ¶ 200-190.)

Idaho — The legislature may, in its discretion, declare that a foreign corporation is not doing business within Idaho when it holds or receives income from obligations secured by mortgages on property located in Idaho. (Opinion of the Attorney General, State Tax Reporter, Idaho, ¶ 4-002.)

Ohio — When the time for the payment of real property tax has been extended, the imposition of the penalty for failure to pay real property taxes when due is correspondingly extended. Interest charges do not become operative until one year from the time of the extended dates. (Opinion of the Attorney General, State Tax Reporter, Ohio, ¶ 200-713.)

South Dakota — January first of the year following that in which taxes are assessed is the date upon which the lien for real estate taxes attaches as between vendor and vendee. Where the real property passes from a taxable owner to a tax exempt owner prior to January first, the tax lien does not attach. However, where real property passes from a taxable owner to a tax exempt owner after January first, such tax exempt owner takes such land subject to the tax lien. (Opinion of the Attorney General, State Tax Reporter, South Dakota, ¶ 200-025.)

Texas — A foreign corporation which has entered into a Texas limited partnership as a limited partner must take out a certificate of authority to transact business in the state if the actions of the partnership or of the corporation would constitute the transacting of business in the state if done directly or alone by the foreign corporation. (Opinion of the Attorney General, State Tax Reporter, Texas, ¶ 200-239.)

Utah — A county does not have the power to impose an occupation tax on nonresident wholesalers making deliveries of merchandise and food items within the county. Section 17-5-27, U. C. A. 1953 grants to counties the power to license for purpose of regulation and revenue and not for revenue only. (Opinion of the Attorney General, State Tax Reporter, Utah ¶ 34-011.)

some important matters

For August and September

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

Arkansas — Annual Franchise Tax due on or before August 10.—Domestic and Foreign Corporations.

California — Franchise Tax based on net income. Second installment due on or before September 15.—Domestic and Foreign Corporations.

Idaho — Annual Statement and Annual License Tax due between July 1 and September 1.—Domestic and Foreign Corporations.

Kentucky — Report of Unclaimed Dividends, etc., due on or before September 1.—Domestic and Foreign Corporations.

Louisiana — Franchise Tax Report and Tax due on or before October 1.—Domestic and Foreign Corporations.

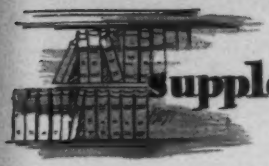
Maine — Annual Franchise Tax due September 1; delinquent one month later.—Domestic Corporations.

Oklahoma — Annual Franchise Tax Report and Tax due on or before August 31.—Domestic and Foreign Corporations.

Oregon — Annual License Fee due August 15.—Domestic Corporations. Annual License Fee due August 15.—Foreign Corporations.

Quebec — Annual Return to Provincial Secretary due on or before September 1.—Domestic and Foreign Corporations.

Wisconsin — Second Installment of Income Tax due on or before August 1.—Domestic and Foreign Corporations.



supplementary literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York 5, N. Y.

Heads I Win, Tails You Lose. An explanation of the possible consequences to the corporation which takes a chance [?] on doing business in states outside the state of its incorporation without complying with governing laws, rulings and regulations.

Spot Stocks Mean More Sales. A review of the advantages *and* dangers of using spot stocks at strategic shipping centers to bolster and increase sales.

Corporate Tightrope Walking. Of interest to counsel for and the officers of any corporation carrying on business in interstate commerce.

Agent for Process. Case histories of corporation officials who suddenly found out that trouble can take funny bounces when statutory representation is entrusted to a business employee.

Before and After Qualification. A complete list of aids and services—including those supplied without charge—which CT furnishes for lawyers working on foreign corporation matters.

Corporate Confusion. A discussion of the wriggling, twisting, seemingly opposite court decisions which make building a pattern for out-of-state operations by a corporation a risky business these days.

A Pretty Penny . . . Gone! What it can cost a corporation—as shown by actual court cases—if its agent cannot be found when service of process is attempted.

Suppose the Corporation's Charter Didn't Fit! Shows how charter provisions which suit well enough at time of organization may be handicaps for the corporation in later life—some measures to avoid them that a lawyer may help his client to take.

Some Contracts Have False Teeth. Interesting case-histories showing advisability of getting lawyer's advice before contracting for work outside home state, even for federal government.

THE CORPORATION TRUST COMPANY
120 Broadway, New York 5, N. Y.

Form 3547 requested

The CORPORATION JOURNAL

The Corporation Journal is published by The Corporation Trust Company bi-monthly, February, April, June, August, October and December. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers and accountants upon written request to any of the company's offices.